

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

*[Protest of Bid Rejection as Nonresponsive]*

FILE: B-197566

DATE: June 4, 1980

MATTER OF: MBAssociates

*CWG 291*

**DIGEST:**

Where amendment to IFB only decreases cost of performance, failure to acknowledge amendment should be waived and award made on basis of bid as submitted.

MBAssociates (MBA) protests the rejection of its bid as nonresponsive because of its failure to acknowledge an amendment to IFB N60530-80-B-0053, issued by Naval Weapons Center, China Lake, California. MBA maintains that its bid should have been accepted because the amendment contained a minor specification change which did not affect the price or legal obligation of MBA and the protester was not instructed to acknowledge the amendment. For the reasons stated below the protest is sustained. *AGC*

The solicitation, which called for bids for electric primers for explosives and related items, required that bids be submitted by December 10, 1979. A specification referenced in the solicitation provided for two test procedures, 5.1 and 5.2. Since the Navy determined that only test 5.2 was required all bidders were telephoned on December 10 and informed that an amendment would be issued which provided that only 5.2 would be required, that the bid opening date would be extended to December 17, and that telegraphic bids would be permitted. The written amendments were issued on December 11 and on the December 17 opening date MBA's low bid was determined nonresponsive for failure to acknowledge the amendment. The Navy states that the remaining four bidders acknowledged the amendment, but indicates that one of the acknowledgements was late.

MBA states that it did not receive the written amendment until the morning after bid opening and argues that its bid should be accepted because it informed the Navy during the December 10 telephone conversation that the change in testing would not affect its price.

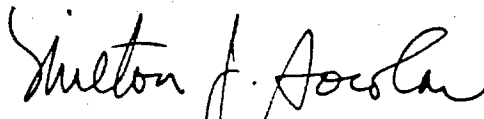
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The failure to acknowledge an amendment usually renders the bid nonresponsive and that failure cannot, as MBA argues, be cured by oral discussions. Aqua-Trol Corporation, B-191648, July 14, 1978, 78-2 CPD 41. Nevertheless, the failure to acknowledge an amendment may be waived if the amendment clearly would have no effect or merely a trivial or negligible effect on price, quality, quantity, delivery or the relative standing of bidders. See Defense Acquisition Regulation (DAR) § 2-405 (iv)(B) (DAC 76-17, September 1, 1978).

The only significant change made by the amendment, which specified that only test 5.2 was required, was that test 5.1 was eliminated from the solicitation. The Navy indicates that test 5.1, which measures a wider frequency range, requires more costly equipment and takes more time than test 5.2, is more costly to perform than test 5.2. Therefore the amendment had the effect of reducing the cost of performing the contract. Since in cases such as this the low bidder's price does not reflect the lessened requirements, its failure to acknowledge the amendment does not prejudice other bidders but could only damage its own competitive position. Thus, we have held that the failure of the low bidder to acknowledge an amendment which merely effects a decrease in the cost of performance should be waived as a minor informality. Imperial Fashion Inc. B-182252, January 24, 1975, 75-1 CPD 45.

The Navy argues that the amendment contains a significant change in the specifications. However, as that change only imposes a less stringent test requirement without changing the character of that requirement (test 5.2 was provided for in the original IFB along with test 5.1), we believe that the Navy should not have rejected MBA's bid as nonresponsive but should have waived its failure to acknowledge the amendment as a minor informality. Accordingly, we recommend that the Navy award the contract to MBA if it is otherwise determined to be the low, responsive, responsible bidder.

The protest is sustained.



For The Comptroller General  
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-197566

June 4, 1980

The Honorable Edward Hidalgo  
The Secretary of the Navy

Dear Mr. Secretary:

Enclosed is a copy of our decision of today sustaining MBAssociates' protest of the rejection of its bid because of its failure to acknowledge an amendment to IFB N60530-80-B-0053 issued by the Naval Weapons Center, China Lake, California.

We direct your attention to our conclusion that MBA's failure to acknowledge the amendment should have been waived as a minor informality and our recommendation that the contract be awarded to MBA if that firm is determined to be the low, responsive, responsible bidder.

We would appreciate advice of the action taken on the recommendation.

Sincerely yours,

A handwritten signature in dark ink, reading "Milton J. Fowler". The signature is written in a cursive style with a large, stylized "M" and "F".

For The Comptroller General  
of the United States

Enclosure